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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SENORX, INC.,

Plaintiff,

vs.

COUDERT BROTHERS, LLP, and
DOES 1 - 500,

Defendants.

CASE NO. C 07-01075 SC

**DECLARATION OF GERALDINE
WEISS**

Date: August 17, 2007
Time: 10:00 am
Judge: Honorable Samuel Conti
Dept. Crtr. 1

Action Filed: October 27, 2004
Trial Date: Vacated

I, Geraldine Weiss, declare that I am an attorney at law, duly licensed to practice in the State of California, and am an associate in the Law Offices of Michael J. Piuze, attorney for plaintiffs. I make the following declaration of my own personal knowledge and, if called upon to testify, could and would testify competently as follows:

1. Attached as Exhibit 1 is a true and correct copy of extracts of the deposition transcript of Coudert ex employee, San Francisco based Anne Marie Leavy, who I deposed on March 28, 2006. Ms. Leavy identifies the (local, California based) employees who were responsible for Coudert foreign filings as San Francisco area based Tara Faneza (page 13, lines 10-17), who was supervised by defendant, San Francisco based Don Bartels (page 18, lines

1 15-16 and page 83, lines 4-8). The interim managing partner to whom Ms.
2 Leavy complained about Mr. Faenza's work was San Francisco based
3 defendant Lilliam Nakagawa (page 77, lines 13-24, page 78, lines 4-14 and
4 page 96, lines 3-10). The managing partner at Coudert San Francisco was
5 San Francisco area based Mr. Hebert (page 97, lines 20-21). The testimony
6 of Ms. Leavy is crucial to this case as it shows that the Coudert employee in
7 charge of the SenoRx foreign filings (in this legal malpractice case where the
8 three foreign filings were missed) was incompetent and inadequately
9 supervised. **Based upon information received from Coudert during**
10 **discovery, these ex Coudert employees (some of whom are defendants)**
11 **are all California based.**

- 12 2. Attached as Exhibit 2 is a true and correct copy of extracts from the
13 deposition of Coudert ex employee, San Francisco area based Ruth Der who
14 I deposed on February 28, 2006. Ms. Der testified that (local, California
15 based) defendants San Francisco area based Don Bartels and San Francisco
16 area based David Schnaff were supervising attorneys for IP (pages 17-18,
17 lines 20-3). Defendant Don Bartels supervised international property for
18 Northern California (page 19, lines 10-18). Defendant Mr. Hebert was the co-
19 managing partner with defendant Mr. Michaelson. (Page 19, lines 2-9).
20 SenoRx was assigned to the San Francisco office (only). ALL of the files
21 were kept there and various San Francisco Coudert employees worked on
22 the SenoRx file - James Fox, Nita Miller, Anne Marie Leavy, Jordan Wilson
23 and Tara Faenza - who was in charge of prosecuting the SenoRx foreign
24 applications (page 20-21, lines 4-20). **All of these employees are**
25 **California residents.** The testimony of Ms. Der is important as it illustrates
26 who worked on the SenoRx files and also identifies which of the Coudert
27 attorney defendants were involved in managing the San Francisco offices
28

where the malpractice occurred.

3. The testimony of Ms. Der regarding the location of SenoRx files (San Francisco) calls attention to another relevant factor - this is a document intensive case and the documents were kept in the San Francisco area by its former attorney Coudert Brothers and its current San Francisco based attorney, Duane Morris.

4. Attached as Exhibit 3 is a true and correct copy of defendant Coudert Brother's responses to Special interrogatories which identify the names and addresses of ex Coudert employees who worked on the SenoRx file: these include Ruth Der, Tara Faenza, Jordan Wilson, Lorraine Carcamo and James Fox. **All are based in San Francisco or Palo Alto.** See Responses No 1, 2 and 3.

5. Attached as Exhibit 4 is a true and correct copy of ex- cross defendant Duane Morris' responses to Form Interrogatories which identify the names and addresses of ex Coudert employees who have knowledge of the SenoRx malpractice, again locally based; these include Edward Lynch, Ruth Der, Tara Faenza and defendants Don Bartels and David Schnaff. **All are based in San Francisco or Palo Alto.** See Response No 12.1.

6. Attached as Exhibit 5 is a true and correct copy of the Order Denying Plaintiff's Motion to Remand.

7. This firm previously attempted to serve all of the individual defendants who were partners at Coudert. Certain out of state defendants appeared (only) and demurred based on their claimed status as limited liability partners. Wilson Elsner strategically appeared for specific out of state defendants - only. While their demurrer was pending, no further (great) expense was incurred in personally serving in state defendants (all Coudert partners) who would raise the identical issue. After the final demurrer was overruled (May,

2007) defendants who had appeared removed this case to Federal Court. While awaiting the final disposition of where litigation will proceed, San Francisco or New York, I tried to save SenoRx thousands of dollars in personal service fees (for dozens of California attorneys who do not want to be served) by asking counsel for most of the out of state defendants to accept service for the California defendants.

8. Attached as Exhibit 6 is a true and correct copy of the letter I sent to defense counsel Marin Denniston, asking him to voluntarily appear for the California defendants in this case to save the huge time and expense involved in personally serving the California defendants who refused to return the notice of acknowledgment letter with summons and complaint which was previously mailed to all. As of this date, Wilson Elser has declined to accept service.

9. SenoRx is based at 11 Columbia, Suite A, Aliso Viejo, California 92656. **The SenoRx employees who had dealings with Coudert Brothers and who therefore would testify at trial are all based in California.**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: July 25, 2007 at Los Angeles, CA

Geraldine Weiss

GERALDINE WEISS,
Declarant